

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.253/2017

IN
SUIT NO. 966/2014

D. Sundararajan

... Applicant /
Plaintiff

V/s.

Spice Energy Pvt. Ltd. & Ors.

... Respondents

Mr. Rahul Narichania, Senior Advocate with Ms. Pushpa Tiwari i/b.
SRS Legal for the Plaintiff

Mr. Parshva Doshi with Kartik Prasad i/b. Dhruve Liladhar & Co. for
Defendant Nos.1 to 3.

Mr. Shyam Kapadia with Abhijeet Mahadeokar for Respondent Nos.4
and 5.

CORAM: K.K. TATED, J.

DATED : DECEMBER 6, 2017

PC. :

1. Heard the learned counsel for the parties. By this Chamber Summons, the plaintiff seeks permission to carry out amendment in the plaint. The learned senior counsel for the plaintiff submits that they filed the suit for recovery of Rs.9,68,59,489/- towards salary and leave salary, notice pay, gratuity, vehicle hire charges, commission and interest @ 18% p.a. from 01.02.2013 to 31.10.2014 from the Defendants. He submits that by this Chamber Summons the Applicant seeks permission to clarify the relationship of Defendants interse. He submits that at the time of filing the suit they described the relationship of the Defendants in paragraph 2, 3 and 36 of the plaint itself. He

submits that the Applicant wants to clarify those paragraphs by way of amendment. He further submits that the Applicant seeks to add para 41A in the plaint stating that the Defendants are jointly and severally liable to pay the claim of the plaintiff. The Applicant wants to insert “jointly and severally” in paragraph 33, prayer clauses (a), (b) and (c) of the plaint. He submits that though the Applicant made prayer in the suit to the effect that decree be passed against the Defendants or such of the Defendants, but the plaintiff wants to clarify that his claim is against Defendants “jointly and severally”. Hence, the Applicant filed the present Chamber Summons. He submits that there is no question of delay in filing the Chamber Summons. He submits that if the structure and nature of the suit is not going to change because of amendment, then there is no question of considering the point of limitation. To that effect, the learned senior counsel relied upon an unreported judgment in the matter of *Neil Harvey, Director Finance (Applicant) Santosh Rangnekar (Plaintiff) Vs. BC Exploration & Production India Ltd. & Ors.* in Chamber Summons No.41/2013 in Suit No.187/2012 dated 19.01.2015 passed by this court (Coram : K. R. Shriram, J.). He relies on para 13 and 14 of this authority, which read thus:

“13. The Apex Court has also in the matter of Revajeetu Builders and Developers Vs. Narayanaswamy & Sons & Ors. 2009 (10) SCC 84 has listed various factors to be considered while allowing the amendment application. Paragraph 63 reads as under :“

On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment :

(1) whether the amendment sought is imperative for proper and effective adjudication of the case ;

(2) *whether the application for amendment is bona fide or mala fide ;*

(3) *the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money ;*

(4) *refusing amendment would in fact lead to injustice or lead to multiple litigation ;*

(5) *whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case ; and*

(6) *as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

14 *As no additional prayer is being inserted, the question of limitation does not arise. Having considered the amendment sought, the proposed amendment does not constitutionally or fundamentally changed the nature and character of the case. Moreover, the amendment will enable the court in deciding the real disputes between the parties. I also find no malafide on the part of the plaintiff in bringing out the amendment because what is being introduced is only better particulars for the allegations of victimization and discriminatory treatment as mentioned in paragraph 11 of the plaint.”*

2. The learned senior counsel for the Applicant also relied on a Division Bench judgment of this court in the matter of **Gaganmal Ramchand Vs. The Hongkong & Shanghai Banking Corporation AIR 37 1950 Bom. 345**, particularly para 3 thereof, which reads thus:

“3 Now, apart from authority, turning to the scheme of the Civil Procedure Code, O. 6, R. 17, is very wide in its terms and it gives power to the Court to allow either party to alter or amend his pleadings in order that the real questions in controversy between them should be adjudicated upon. Mr. Seervai relies on O. 7, R. 11, which provides that the plaint shall be rejected in the cases mentioned in that rule and the one with which we are concerned is where it does not disclose a cause of action. Mr. Seervai's argument is that when a plaint comes before the Court and that plaint does not disclose a cause of action, it is mandatory upon the Court to reject that plaint and dismiss the suit and the Court has no power to permit the plaint to be amended. In other words, Mr. Seervai's contention is that O. 6, R. 17, is controlled by O. 7, R. 11, and in cases falling under O. 7, R. 11, the Court has no jurisdiction to order the amendment of the plaint. I am unable to accept that contention. I see no reason whatever why the power of the Court to allow amendment of pleadings should be in any way restricted or controlled by the provisions contained in O. 7, R. 11. It is perfectly true that it is incumbent upon the Court to reject a plaint that does not disclose a cause of action, but it does not follow that it is not open to the Court to allow a plaint to be amended so that it should disclose a cause of action. It is only when a plaint does not disclose a cause of action that the Court is called upon to exercise its power under O. 7, R. 11. But the Court may prevent the operation of O. 7, R. 11, and may save the plaint being rejected by exercising its power under O. 6, R. 17, and allowing the plaint to be amended. It would indeed be an extraordinary proposition to lay down that if various averments had to be made in the plaint which would go to constitute a cause of action, and by some oversight or some mistake the plaintiff failed to make one of the averments, then in that case the plaint must be dismissed and the plaintiff could not apply for an amendment and make the necessary averment.”

3. On the basis of these facts and the authorities, the learned counsel for the Applicant submits that this Hon'ble Court be pleased to allow the Chamber Summons. He submits that if the Chamber Summons is not allowed, irreparable loss will be caused to the Plaintiff.

4. On the other hand, the learned counsel for the Defendant vehemently opposed the Chamber Summons. He submits that there is no explanation in affidavit in support of the Chamber Summons, as to why there was delay of more than 3 years on the part of the Applicant in making the Chamber Summons. Though these facts were in the knowledge of the Applicant at the time of filing the suit, why those were not incorporated at that time itself. He further submits that by this Chamber Summons, the Applicant wants to bring on record altogether new facts. All those objections are raised by them in their written statement particularly in para 3 and 5. He further submits that by this Chamber Summons the Applicant wants to make the Defendants jointly and severally liable though the said prayer was not made in the plaint. He further submits that if the nature of the suit is going to change because of amendment, then court should not allow such type of amendment. In support of this submission, he relies on the judgment in the matter of **Modi Spinning & Weaving Mills Co. Ltd. and Anr. Vs. Ladha Ram & Co. 1976 4 SCC 320**. Paragraph 7 to 9 thereof read thus:

“7. The trial court rejected the application of the defendants for amendment. One of the reasons given by the trial court is that the defendants wanted to resile from admissions made in paragraph 25 of the written statement. The trial court said that "the repudiation of the clear admission is motivated to deprive the plaintiff of the valuable right accrued to him and it is against law." The trial court held the application for amendment to be not bona fide.”

“8. The High Court on revision affirmed the judgment of the trial court and said that by means of amendment the defendants

wanted to introduce an entirely different case and if such amendments were permitted it would prejudice the other side.”

“9. The decision of the trial court is correct. The defendants cannot be allowed to change completely the case made in paragraphs 25 and 26 of the written statement and substitute an entirely different and new case.”

5. On the basis of these submissions and the authority of the Apex Court, the learned counsel for the Defendant submits that there is no substance in the Chamber Summons and same is liable to be dismissed with costs.

6. I heard both sides at length. It is to be noted that the suit filed by the Plaintiff is for recovery of dues towards salary and leave salary, notice pay, gratuity, vehicle hire charges, commission and interest @ 18% p.a. from 01.02.2013 to 31.10.2014 from the Defendants. By this Chamber Summons, the Plaintiff wants to place on record better particulars of the Defendants, though the same are also explained by him in para 2, 3 and 36 of the plaint. Bare reading of the proposed amendment in schedule on page 4 of the Chamber Summons, particularly para (I) shows that the Plaintiff wants to place on record relationship of Defendants interse. That is not going to change the nature of the suit itself. Hence, there is no question of denying the Applicant Plaintiff to carry out amendment in the plaint as per para (I) of Schedule on page 4 of the Chamber Summons.

7. By para II, III, IV, V and VI of schedule to the Chamber Summons on page No.4, the Plaintiff seeks permission to carry out amendment by

adding the word “jointly and severally”. It is to be noted that bare reading of the plaint and particularly prayer clause (a) itself shows that initially the Plaintiff has claimed the relief against all the Defendants or any other Defendants as this court feel proper in the interest of justice. Considering these facts, I do not find any reason to allow the Applicant Plaintiff to carry out amendment in the plaint as per para II, III, IV, V and VI of schedule to the Chamber Summons on page No.4.

8. Hence, the Chamber Summons is partly allowed as under:

- a. The Applicant is permitted to carry out amendment in the plaint as per para (I) of schedule to the Chamber Summons on page 4.
- b. Amendment to the plaint as para II, III, IV, V and VI of schedule to the Chamber Summons on page No.4 stands rejected.
- c. Amendment to be carried out on or before 12.01.2018 failing which the Chamber Summons shall stand dismissed without reference to the court.
- d. If amendment is carried within stipulated time as stated hereinabove the Plaintiff to serve an amended copy of the plaint on the Defendants within two weeks thereafter i.e. on or before 29.01.2018.
- e. If amended copy of the plaint is served on the Defendants within stipulated time as stated hereinabove, liberty granted to the Defendants, if they so desire to file their additional written statement with copy to other side on or before 31.03.2018.

- f. The Chamber Summons stands disposed of accordingly.
- g. No order as to costs.

(K.K. TATED, J.)